

FILED
COURT OF APPEALS
DIVISION II

2021 JUL -8 PM 12:48

STATE OF WASHINGTON

BY tho
DEPUTY

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION _____

IN RE: Personal
restraint Petition
of
Sharon E Carson
Dox # 267469

) NO:

) PERSONAL RESTRAINT PETITION

) RAP 16, ET SEQ.

A. STATUS OF PETITIONER.

I, Sharon E Carson, apply for relief from confinement. I am

not now in custody upon conviction of a crime. (If not serving a sentence upon

conviction of a crime) I am now in custody because of the following type of order:

Judgement and sentence signed in Grays Harbor
County Superior Court on June 4th 2021

1. The court in which I was sentenced in is: Grays Harbor Superior

2. I was convicted of the crime(s) of three controlled bags in a school zone

3. I was sentenced after ☒ trial, [] plea of guilty, on the 27th day of Nov.
2018.

The trial judges name was: Steven Brown

4. My lawyer at trial was: Morgan Lake, Soriano Law firm

Address is: P.O. Box 664, 104 West Marcy Ave. Montesano, Wa. 98563

5. I ☒ did [] did not, appeal the decision of the trial court. I appealed to the (name
of court Court of Appeals division II

My appeal lawyer was: Lise Ellner

Address: P.O. Box 2711 Vashon, Washington 98070

The decision of the Appellate Court [] was ☒ was not, published. The decision
was published in: _____

6. Since my conviction, I ☒ have [] have not asked the court for some relief from
my sentence other than I have already written the above. (If the answer is that I

have asked) the court I asked was on August 13 2020 Lise Ellner sent
medical information to Grays Harbor Prosecuting Attorney related to Covid 19

I received from DOC and due to my age, requested to consider her
release or resentencing under the law enacted by Senate bill 6164 as of June 11, 2020
Relief was denied on: No response back.

7. The name of the lawyer in the proceeding in question 6 was: Lise Ellner

Address: P.O. Box 2711 Vashon, Washington

8. If the answers to the above questions do not really tell about the proceedings and the courts, judges and the attorneys involved, tell about it here I am seeking review on the Judgement and Sentence from Grays Harbor Superior Court signed on June 4th 2021 after resentencing and amending the judgement and sentence

B. GROUNDS FOR RELIEF

If you claim more than one reason for relief from confinement, attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", etc.

I claim I have _____ reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

1. I should be given a new trial or released from confinement because [Here state the legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement]: On December 4th 2020 The Court of Appeals filed a mandate in Grays Harbor Superior court to resentence. I waited six months, the Superior Court, or the

prosecuting attorney failed to file a motion for good cause for an extension. A violation of my sixth amendment right to speedy sentencing under CrR 7.1 and RCW 9A.44.110

2. The following facts are important when considering my case [After each statement of fact, put a name of the persons who knows the fact and will support your statement of the fact. If the fact is already in the record in your case, indicate

that also.] fact on record, the Superior Court should have vacated 72 months, instead they vacate 48.
fact on record, Appeal Attorney Lise Ellener the sentence would be 72 months shorter than the sentence imposed.

fact on record, After 6 mo. and hearing nothing from the courts. Ms Carson filed her own motion to resentence.

3. The following reported court decisions [include citations if possible] in cases similar to mine show the error I believe happened in my case [If none are known,

state "None Known"]: please refer to Ground 5
and 6

4. The following statutes and constitutional provisions should be considered by the

court. [If none are known, state "None Known"]:Washington Constitution, Article 1 § 22.

have held or assumed that the constitutional right to a speedy trial encompasses a right to speedy sentencing and CrR 7.1 establishes such a right.

5. This petition is the best way I know to get the relief I want. And no other way

will work as well because: It was my believe that 72 months would be vacated from my sentence, the resentencing was held in open court on June 4th 2021 with no counsel for defendant.

C. STATEMENT OF FINANCES

If you cannot afford to pay the filing fee or cannot afford to pay an attorney to help you, fill this out. If you have enough money for these things, do not fill out this part of the form.

1. I ☐ do ☐ do not ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.

2. I have \$ 130⁰⁰ in my prison or institution account.

3. I ☒ do ☐ do not ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer.

FILED
COURT OF APPEALS
DIVISION I
2021 JUL - 8 PM 12:48
STATE OF WASHINGTON
DEPUTY

4. I ☐ am ☒ am not employed. My salary or wages amount to \$ _____ a month. My employer is _____ and My total income I got was \$ _____.

5. During the past 12 months, I ☐ did ☒ did not get any rent payments. If so the total amount I got was \$ _____ I ☐ did ☐ did not get any interest. If so, the total amount I got was \$ _____ I ☐ did ☐ did not get any dividends, If so, the total amount was \$ _____ I ☐ did ☐ did not get any other money, if so, the total amount was \$ _____, I ☐ did ☐ not have any cash except as said in answer 2. If so, the total amount of cash I have is \$ _____, I ☐ did ☒ did not have any savings accounts or checking accounts. If so, the amount in all accounts is \$ _____, I ☐ did ☐ did not own stocks, bonds, or notes. If so, their total value is \$ _____.

6. List all real estate and other property or things of value, which belong to you in which you have an interest. Tell what each item of property is worth and how much you owe on it. Do not list household furniture and furnishing and clothing, which you and your family need.

Item	Value
N/A	

7. I ☐ am ☒ am not married. If I am married, my wife or husbands name and address is: _____

8. All persons who need me to support them are listed here.

Name/Address	Relationship	Age
N/A		

9. All the bills I owe are listed here.

Creditor Name/Address	Amount Owed
N/A	

D. REQUEST FOR RELIEF

I want this court to:

☐ Vacate my conviction and give me a new trial.

☒ Vacate my conviction and dismiss the criminal charges against me without a new trial.

☒ Other: vacate the enhancement part of my sentence

E. OATH OF PETITIONER

THE STATE OF WASHINGTON)
COUNTY OF PIERCE) ss.

After being first duly sworn, on oath, I depose and say: That I am the petitioner,
that I have read the petition, know its contents, and I believe the petition is true.

Dated: 6/30/2021

Sharon Carson

Signature

Sharon Carson 267469

Print Name & DOC

Washington Correction Center for Women
9601 Bujacich Rd. N.W.
Gig Harbor, Washington 98332-8300

THE STATE OF WASHINGTON)
COUNTY OF PIERCE) ss.

I certify that I know or have satisfactory evidence that Sharon Carson also
known as Sharon E. Carson is the individual that appeared before me and said
individual acknowledged that it was her free and voluntary act for the use and
purpose of this instrument.

Dated: 6/30/2021

Beverly L. Hayes

Notary Public In and For the State of Washington
Residing In: Olympia Bremerton
My Commission Expires: 04/08/2023



Ground 1

The violation of a defendants Sixth Amendment right to speedy Sentencing, as well as a violation of RCW 9.94A.110 and CrR 7.1 is dismissal of charges against him or her. Therefore, Sharon Carson, respectfully requests that this court dismiss the three school bus stop enhancements

Ground 2

On May 24th 2021 at 8:00, and after waiting for 6 months, a virtual hearing was held at Washington Correction Center for Women. Present were, The Honorable Judge Edward Brown, Grays Harbor Prosecuting Attorney, appointed counsel for the Defendant, Attorney Micheal Nagle. Even though all parties were present, the mandate had been filed, and a motion filed by Ms. Carson to be resentenced, vacating the enhancements. The prosecutor requested for a two week continuance, until June 4th 2021, at 8:00 am, so to have the original sentencing judge, Judge Steven Brown, who had retired, come out of retirement after sentencing her 31 months prior to May 24th 2021, and resentence her. To ask a retired judge to come out of retirement are unreasonable and unfair. The Court of Appeals made it very clear in vacating the school bus stop enhancements part of her sentence.

Ground 3

On October 27th 2020 the court of Appeals vacated the imposition of three school bus stop enhancement and remanded for resentencing. The court of appeals filed the mandate on December 4th, 2020, with the County court. Statute CrR 7.1 requires the court to set a date, time and place, for the sentencing in compliance with RCW 9.94A.110 within 40 court days. Subject only to an extension for good cause on a motion filed by the court, or the prosecuting attorney. It took 6 months for the virtual hearing to take place. No motions were ever filed for an extension in the 6 months. The violation of a defendants Sixth Amendment right to speedy sentencing, as well as a violation of RCW 9.94A.110 and Statute CrR 7.1.

Ground 4

On June 4th, 2021, a court hearing was held in Grays Harbor Superior Court with the Honorable Judge Steven Brown and Grays Harbor Prosecuting Attorney. Ms Carson waived her right to attend the hearing. On June 14th thru legal mail, she received the judgement and sentence, signed by Judge Steven Brown, the prosecuting attorney, there were also a place for appointed counsel, Michael Nagle to sign, that place was left blank. So there was no counsel present to represent her at the resentencing hearing. Ms Carson had previously reached out to Mr. Nagle by U.S. Legal Mail, stating she would want him to advocate her Sixth Amendment right to speedy Sentencing, as well as a violation by the court of RCW 9.94A.110 and Statute CrR 7.1 is dismissal of Charges against her. The only two parties present at the resentencing hearing were the judge and the prosecutor. Ms Carson has never signed a judgement and sentence, or right to appeal the judgement and sentence.

Ground 5

SPEEDY SENTENCING

A criminal defendant has a constitutional right to a speedy trial. United States Constitution, Amendment VI. Our state constitution also confers the right to speedy trial. Washington Constitution, Article 1 § 22. A number of courts have held or assumed that the constitutional right to a speedy trial encompasses a right to speedy sentencing and our CrR 7.1 establishes such a right. State v. Edwards, 93 Wn.2d 162, 167 n.2, 606 P.2d 1224 (1980) and cases cited therein; United States v. James, 459 F.2d 443 (5th Cir. 1972), cert. denied, 409 U.S. 872, 34 L.Ed.2d 123, 93 S.Ct. 202 (1972); United States v. Sherwood, 435 F.2d 867 (10th Cir. 1970), cert. denied, 402 U.S. 909, 28 L.Ed.2d 649, 91 S.Ct. 1381 (1971); State v. Cunningham, 405 A.2d 706 (Del. 1979); Gonzales v. State, 582 P.2d 630 (Alaska 1978); State v. Fennell, 218 Kan. 170, 542 P.2d 686 (1975).

RCW 9.94A.110 states, in relevant part: "Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction." Therefore, any delay past the 40 day limit is a potential violation of the defendant's constitutional right to speedy sentencing.

To establish a violation of the Constitutional right to a speedy sentencing, the delay must be "purposeful" or "oppressive". State v. Johnson, 100 Wn.2d 607, 674 P.2d 145

Continued 5

(1983); Pollard v. United States, 352 U.S. 354, 361, 1 L.Ed. 2d 393, 77 S.Ct. 481 (1957). This determination turns on a balancing of four factors: (1) length of delay; (2) reason for delay; (3) the defendant's assertion of his or her right; and (4) the extent of prejudice to the defendant. State v. Braithwaite, 34 Wn.App. 715, 667 P.2d 82 (1983); State v. Cunningham, supra at 710; State v. Edwards, supra at 167 n.2. See also Barker v. Wingo, 407 U.S. 514, 533, 33 L.Ed.2d 101, 92 S.Ct. 2182 (1972). These same factors should provide guidance in application of CrR 7.1, which prohibits "unreasonable delay." State v. Johnson, supra.

Ground 6

STATUTORY CONSTRUCTION AND THE RULE OF LENITY

Courts are obliged to follow the plain and unambiguous words the legislature has chosen. State v. Bolar, 129 Wn.2d 361, 366, 917 P.2d 125 (1996); In re A, B, C, D, E, 122 Wn.2d 80, 87, 847 P.2d 455 (1993). If, however, a statute is deemed ambiguous and the court needs to engage in statutory interpretation, the appropriate and applicable interpretive rule in a criminal case is the rule of lenity. This long-standing doctrine applies to the Sentencing Reform Act and operates to resolve any statutory ambiguities in favor of the criminal defendant. E.g., In re Sietz, 124 Wn.2d 645, 880 P.2d 34 (1994); State v. Lively, 130 Wn.2d 1, 14, 921 P.2d 1055 (1996); State ex rel. McDonald v. Whatcom Cy. Dist. Court, 92 Wn.2d 35, 37-8, 593 P.2d 546 (1979).

When a penal provision is at issue, the courts will not interpret the statute so as to increase the penalty imposed, absent clear evidence of legislative intent to do so. State v. Martin, 102 Wn.2d 300, 303 684 P.2d 1290 (1984) (citing State v. Workman, 90 Wn.2d 443, 584 P.2d 382 (1978) (rule of lenity applied to enhanced penalty provisions of uniform firearms act)). Applying this principle in the context of concurrent versus consecutive sentencing, ambiguities are resolved in favor of concurrent sentencing. See In re Caley, 56 Wn.App. 853, 785 P.2d 1151 (1990).

When a penal statute is ambiguous, the courts may resort to legislative history to interpret it, but only if the available evidence of legislative intent is "clear". State v. Martin, 102 Wn.2d 300, 684 P.2d 1290 (1984) (it is 'the policy of the court not to interpret a criminal statute so as to increase the penalty imposed, absent clear evidence of legislative intent to do so') (quoting State v. Workman, 90 Wn.2d 443, 584 P.2d 382 (1978) ; State v. Rice, 98 Wn.2d 384, 655 P.2d 1145 (1982) (in the absence of any clear expression of legislative intent to the contrary, court is required to apply rule of lenity)).